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ANNEX 23

ANNEX

ROMANIA

to the

EU Anti-Corruption Report

ROMANIA

1. INTRODUCTION – MAIN FEATURES AND CONTEXT

Anti-corruption framework

Strategic approach. The most recent national anti-corruption strategy 2012-2015 was adopted by the Government and endorsed by Parliament in 2012.¹ It is based on a wide consultation process and was welcomed by most stakeholders. The strategy takes a multi-disciplinary approach and requires the development of sector- and institution-specific anti-corruption strategies across the board. A peer-review mechanism, involving civil society, was put in place to monitor its implementation. Cooperation platforms grouping various categories of stakeholders were also set up.² Monitoring is carried out through evaluation rounds by topic. The activities undertaken within the monitoring process and the assessments made are published on a dedicated portal.³ Implementation is ensured within the limits of the fiscal budgetary strategy for 2012-2014. The national anti-corruption strategy follows a project-based approach: i.e. a number of measures are covered through specific projects while others are considered not to require additional funding and should consequently be covered by the regular budgets of the institutions concerned. The latter category represents 80% of the foreseen measures. While some progress was made on combating high-level corruption, the fight against petty corruption has not yielded sufficient results, while the prevention side remains rather weak both at central and at local levels. The Council recommended to Romania, in the context of the 2013 European Semester for economic policy coordination, to fight corruption more effectively.⁴

Legal framework. The legal framework is largely in place, including recent steps taken to reform the criminal code and the criminal procedure code, which are due to enter into force in early 2014. These reforms aim at fine-tuning the legal framework, strengthening law enforcement authorities and anti-corruption institutions and ensuring increased efficiency and coherent practice of the judiciary in dealing with high-level corruption cases. However, a number of the most recent legislative initiatives of Parliament in December 2013, which, among others, would have narrowed the scope of corruption offences and criminal law provisions on conflicts of interest have seriously called into doubt the stability of the current legislation and the political commitment to see the anti-corruption reforms through. The above-mentioned legislative amendments were declared unconstitutional by the Romanian Constitutional Court in January 2014.⁵ Other considerable challenges remain, including on the implementation of the new codes. The instability of these legislative acts and a number of legal problems identified by practitioners which may require amendments of the codes or interpretative guidelines before their entry into force raise additional difficulties.⁶

Institutional framework. Romania has set up a comprehensive institutional anti-corruption framework. The National Anti-Corruption Directorate (DNA), a specialised prosecution office, is tasked to investigate high-level corruption cases. The DNA has established a solid track record of non-partisan investigations into allegations of high-level corruption.⁷ The successful

1 <http://www.just.ro/LinkClick.aspx?fileticket=T3mlRnW1IsY%3D&tabid=2102>.

2 Independent agencies, law enforcement and judiciary; local administration; ministries; business sector; civil society.

3 <http://sna.just.ro/Paginăprincipală.aspx>

4 Council recommendation 2013/C 217/17 of 9 July 2013.

5 <http://www.ccr.ro/noutati/COMUNICAT-DE-PRES-75>.

6 This was confirmed by successive reports of the Commission in the framework of the Cooperation and Verification Mechanism and reiterated in the most recent CVM report on 22 January 2014:

http://ec.europa.eu/cvm/docs/com_2014_37_en.pdf.

7 For more details on the track record see the section on 'Prosecution of Corruption'.

investigations it has carried out in the last decade revealed corrupt practices involving high-level politicians and public officials, members of the judiciary, law enforcement officials, and people from a wide range of sectors: transport, infrastructure, healthcare, extractive industries, energy, agriculture, sports, etc. For a long time the judiciary had been less effective in dealing with high-level corruption. A change was noted over recent years; the High Court of Cassation and Justice in particular set an example by increasing efficiency in the adjudication of complex corruption cases. The service known as the Anti-Corruption General Directorate (DGA) within the Ministry of Home Affairs is a specialised police structure mainly responsible for investigating corruption within the police, while also covering other sectors. The National Integrity Agency (ANI) checks conflicts of interests, incompatibilities and personal wealth of public officials. Since its establishment in 2008, the ANI has shown good results overall. In the past five years, the confirmation rate of the ANI's decisions on incompatibilities, as well as the administrative decisions on conflicts of interest exceeded 80%. Following the ANI's decisions, over EUR 1 million in unjustified personal wealth was confiscated on the basis of final court decisions. However, over time the follow-up of the ANI's decisions encountered considerable difficulties.⁸ The political will to support the independence, stability and capacity of the anti-corruption institutions and the judiciary has not been constant over time.

Opinion polling

Perception surveys. According to the 2013 Special Eurobarometer on Corruption⁹, 93% of Romanian respondents agreed that corruption is a widespread problem in their country (EU average: 76%), while 42% say that they were personally affected by corruption in their daily lives (EU average: 26%). 82% consider that bribery and use of connections are often the easiest way to obtain certain public services (EU average: 73%).

Experience of corruption. 25% of the Romanian respondents to the 2013 Special Eurobarometer on Corruption admitted that over the past 12 months they had been asked or expected to pay a bribe for services. This is the second highest percentage in the EU and compares to an EU average of 4%.

Business surveys. In the 2013 Eurobarometer Business survey on corruption¹⁰, 81% of Romanian businesses said that favouritism and corruption hamper business competition in Romania (EU average: 73%). 65% of the respondents believed that corruption was a problem for their company doing business in Romania (EU average: 43%), while 64% considered that patronage and nepotism did so (EU average: 41%).

Background issues

Cooperation and Verification Mechanism (CVM). Romania has been subject to CVM monitoring since its accession to the EU. Its performance is measured against four benchmarks covering the areas of justice reforms, integrity, high-level corruption, and prevention and fight against corruption in the public sector. The Commission Decision establishing the CVM requires all benchmarks to be 'satisfactorily' fulfilled.¹¹ In 2012, five years after accession, a stock-taking exercise was carried out. The assessment concluded that many of the 'building blocks' required by the CVM benchmarks were in place, yet that sustainability and irreversibility of the reforms was

8 http://ec.europa.eu/cvm/docs/com_2012_410_en.pdf.

9 2013 Special Eurobarometer 397.

10 2013 Flash Eurobarometer 374.

11 Commission Decision of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption, C (2006) 6569 final, http://ec.europa.eu/enlargement/pdf/romania/ro_accompanying_measures_1206_en.pdf.

still questionable and a track record of implementation which would be required for the Commission to decide to end the CVM was not yet present.¹² The most recent assessment of the state of play of January 2014, which took stock of more recent developments, highlighted that 'progress is not straightforward, so that advances in one area can be constrained or negated by setbacks elsewhere'.¹³

Private sector. In the Global Corruption Index 2013-14 of World Economic Forum, corruption is mentioned as the second most problematic factor for doing business in Romania, after tax rates.¹⁴ Romania has fully transposed the provisions of Framework Decision 2003/568/JHA concerning the liability of legal persons and penalties applicable to legal persons.¹⁵ However, the second implementation report regarding the Framework Decision noted that further clarifications were needed as to how the Romanian legislation treats third-party advantages resulting from active bribery in the private sector. The shadow economy was estimated to be 29.6% of GDP in 2012, which is the second highest percentage in the EU.¹⁶

Financing of political parties. High-profile corruption cases show vulnerabilities in the supervision of party and electoral campaign financing, as well as in the prevention of electoral fraud. In its compliance report of December 2012, GRECO pointed out that 10 out of its 13 recommendations on party funding are still not fully implemented. Legislative amendments are being prepared and, if adopted, will fill a number of existing gaps, notably on access to annual financial statements of political parties. Moreover, existing provisions are not being properly implemented.

Whistleblowing. Romania has had dedicated legislation in place since 2004 on protection of whistleblowers in the public sector.¹⁷ The law requires public employees to report corruption in connection with the public service. Apart from protection against retaliation, the law also provides for protection of the whistleblowers' identity. However, the effectiveness of this legal framework remains to be established. In a 2009 study on protection of whistleblowers in 10 EU Member States, Transparency International noted that implementation of the legislation is uneven and pointed out that in 40% of the cases monitored in Romania various forms of retaliation took place against whistleblowers.¹⁸ A more recent report of Transparency International published in November 2013 noted that some steps were taken to further improve whistleblowers' protection.¹⁹ Improving the mechanisms that ensure whistleblower protection and better implementation of the existing legislation are also among the objectives of the national anti-corruption strategy.

Transparency of lobbying. Lobbying is not regulated in Romania. There is no mandatory registration or obligation of public servants to report contacts with lobbyists. The Romanian authorities were of the view that such new legislation is not necessary since the risks related to lobbying are already covered by the existing rules on conflicts of interest and incompatibilities applicable to public officials. One draft law regulating lobbying is currently discussed by the Chamber of Deputies. In 2010, a Romanian Lobbying Association was set up, with the aim to

12 http://ec.europa.eu/cvm/docs/com_2012_410_en.pdf.

13 http://ec.europa.eu/cvm/docs/com_2014_37_en.pdf.

14 http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf

15 COM(2011) 309 final, Second Implementation report of FD 2003/568/JHA of 6 June 2011: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/docs/report_corruption_private_sector_en.pdf

16 http://ec.europa.eu/europe2020/pdf/themes/06_shadow_economy.pdf.

17 Law 571/2004 on the protection of employees of public authorities, public institutions and other entities who report violations of the law.

18 An Alternative to Silence, Whistle-Blower Protection in 10 European Countries, November 2009, p. 9 and 15.:

http://archive.transparency.org/global_priorities/other_thematic_issues/towards_greater_protection_of_whistleblowers/enhancing_whistleblower_protection_in_the_european_union

19 http://www.transparency.org/whatwedo/pub/whistleblowing_in_europe_legal_protections_for_whistleblowers_in_the_eu.

further promote lobbying activities and possibly ensure self-regulation. However, so far its impact has been limited.

Media and access to information. Objective reporting has deteriorated over the past years and journalism is 'often overruled by the vested interests and political affiliations of the media outlets' owners²⁰, including at times intimidation of magistrates or anti-corruption actors. Limits on media freedom further reduced access to information countrywide. This is compounded by the fact that Romania has the lowest rate of internet coverage in the EU.²¹ Poor implementation of legislation regulating access to information also affects the capacity to prevent and control corruption. Freedom House's Freedom of the Press 2013 index ranked Romania with a score that qualifies it as 'partially free'.²²

2. ISSUES IN FOCUS

Prosecution of corruption

A central autonomous specialised anti-corruption prosecutor's office was set up in 2002. In its first years, it did not establish a track record of high-profile cases. It was reorganised in 2005, with reshaped powers and staffing, and renamed National Anti-Corruption Directorate (DNA). The focus was shifted to high-level and particularly complex cases. The DNA now investigates cases of high and medium-level corruption,²³ and offences against the EU's financial interests.²⁴ Apart from the central office, it also has 15 regional services²⁵ and four territorial offices.

With a new leadership and political will to advance the fight against corruption, after 2006, the DNA started building what is today an impressive track record of high-level corruption cases. The CVM Report of July 2012 stated that 'the performance of DNA in the investigation and prosecution of high-level corruption cases can be considered one of the most significant advances made in Romania since accession. [...] Since 2007, cases at the highest levels of political life and within the judiciary have been raised by DNA against people from all major political parties'.²⁶ Key to the DNA's success has been the fact that its structure incorporates not only prosecutors, but also judicial police and specialists in economics, finances, banking, customs and IT.²⁷

While progress was made in bringing high-level corruption cases to court, the judiciary's capability to handle such cases came under scrutiny. The CVM reports have extensively analysed the reasons for serious delays in court proceedings in high-level corruption cases, some of which incurred the risk of becoming time-barred.²⁸ Still, the rate of adjudicated high-level corruption cases in courts has noticeably risen in the last two years, particularly as a result of efforts made by the High Court of Cassation and Justice. Reports of the judicial inspection service analysing the length of proceedings and reasons for significant delays in a number of high-level corruption cases

20 Bertelsmann Stiftung (2012) BTI 2012 – Romania Country Report. Gütersloth: Bertelsmann Stiftung, p. 8: <http://www.bti-project.org/fileadmin/Inhalte/reports/2012/pdf/BTI%202012%20Romania.pdf> .

21 The Europe 2020 Index of 2012 shows that the internet coverage for Romania is of only 39.9%.

http://reports.weforum.org/the-europe-2020-competitiveness-report/?utm_source=EU2020map&utm_medium=mapembed&utm_campaign=EU2020%2Bembeds#

22 <http://www.freedomhouse.org/report-types/freedom-press> .

23 The high and medium-level corruption cases are identified based on three alternative criteria: the value of the bribe or undue advantages exceeds EUR 10 000 or the damage exceeds EUR 200 000; or the alleged offender is a high-level official (including elected and appointed) or an official at mid-management level.

24 http://www.pna.ro/faces/cine_lucreaza.xhtml .

25 corresponding to the jurisdictions of the courts of appeal.

26 http://ec.europa.eu/cvm/docs/com_2012_410_en.pdf.

27 <http://www.pna.ro/faces/structura.xhtml>.

28 http://ec.europa.eu/cvm/docs/swd_2012_231_en.pdf.

confirmed that the number of delayed decisions has decreased.²⁹ It remains to be seen whether this is a lasting trend. In a number of pending high-level cases more than six years have passed since the alleged offenders were indicted.³⁰

Good practice: the DNA's achievements in high-level corruption cases³¹

From 1 January 2006 to October 2012, the DNA indicted 4 738 defendants, of whom 2 101 held important positions.³² In the past seven years, the confirmation rate of DNA indictments through final court decisions has reached 90.25%. In this period, 1 496 defendants were convicted in final court decisions, of which almost half held political office (including: one former prime minister, one minister, 8 MPs, one state secretary, 26 mayors, deputy mayors and prefects, 50 directors of national companies and public institutions, 60 officials from control authorities). Between 1 January and 15 November 2013, the track record was maintained, with indictments against 823 defendants and 179 final court decisions issued against 857 defendants.

Over the last two years, the number of cases closed with a judgment has risen sharply. The number of final convictions issued in the first three quarters of 2012 was almost double the number of the previous year and four times higher than the conviction rate seven years ago. In 2011, over 230 border police and customs officers from six border crossing points were prosecuted for bribe-taking and participation in an organised crime group, mainly in connection to cigarette smuggling.³³ Among the most notable DNA cases, mention should be made of two cases of a former prime minister who served an imprisonment sentence on charges of illegal funding for his presidential electoral campaign and who is also currently serving time in prison for another conviction on corruption charges. Other notable DNA cases covered the entire political spectrum: a former mayor of Cluj indicted for bribe-taking in exchange for securing public contracts who was investigated in pre-trial arrest at a time when he was an influential member of the ruling party; a minister in office (now former) convicted at first instance for abuse of office for deeds allegedly committed in a previous capacity; an MP who was given prison terms in two corruption cases following final court decisions (aiding and abetting abuse of office in connection with illegal property swaps involving land owned by the Ministry of Defence and bribery involving the players of a football club).

As regards petty corruption, for 2013 the Public Ministry has reported an increase in the number of resolved cases by about 9% compared to a similar period of reference in 2012. The number of indictments went up by about 15%. However, while some progress can be noted over the recent years as regards petty corruption cases investigated by the prosecutor's offices across the

29 http://emap.csm1909.ro/Documente.aspx?path=emap_docs/200704Documente/115400000400463.pdf.

30 Media monitoring project co-financed by the EU which follows all stages of criminal proceedings in a number of high-level corruption cases and keeps public records thereof: <http://anticoruptie.hotnews.ro/>.

31 <http://www.pna.ro/faces/obiect2.jsp?id=193>.

32 These included one former prime minister, nine ministers, five state secretaries, 23 MPs, 105 mayors and deputy mayors, eight presidents and vice-presidents of county councils, eight directors of national agencies, 40 directors of national companies and autonomous administrations and 42 Financial Guard officers, and 48 legal entities.

33 A study commissioned by FRONTEX on anti-corruption measures in EU border control estimated that the network in question brought the implicated border guard roughly EUR 500 in bribes per person per day. While this case illustrated the effectiveness of law enforcement in detecting large-scale corruption schemes of this kind, it also exposed the level of infiltration of corruption at the borders and its links with organised crime: http://www.frontex.europa.eu/assets/Publications/Research/Study_on_anticorruption_measures_in_EU_border_control.pdf.

country,³⁴ overall these have not yet reached a convincing track record.³⁵ Each prosecutor's office has designated at least one prosecutor to handle corruption cases. Most of the cases sent to court by the prosecutor's offices in the country concern police officers, which may also be a result of the effectiveness of the General Anti-Corruption Directorate within the Ministry of Home Affairs. However, the overall number of other petty corruption cases sent to court is rather low.

DNA's drive to investigate high-level cases has also benefited from political circumstances that enabled it to act impartially and independently. A decisive element for the DNA's efficiency concerns the appointment of its leadership.³⁶ As highlighted by the January 2014 CVM Report,³⁷ 'the nomination of the General Prosecutor and of the leadership of DNA and the Directorate for Investigating Organised Crime and Terrorism (DIICOT) was a protracted process.' The procedure through which the leadership of these institutions was eventually appointed, while also including some figures with established track record, 'was essentially a political choice, rather than the result of a procedure designed to allow scrutiny of the candidates' qualities and a real competition.'³⁸ More recently, as stressed by the January 2014 CVM Report, the decisions taken in early October 2013 in relation to the appointments of the heads and deputy heads of section in the DNA raised additional difficulties. Delegations to ad interim positions were abruptly cancelled, and nominations were made by the Minister of Justice which had not fully followed the procedure of consulting the head of DNA. The timing also created concerns that a link was being made with DNA decisions on cases relating to political figures. Following public criticism, including by the Superior Council of Magistracy, new nominations were later on made following consultations with the head of DNA. Following the appointment of the new leadership, the DNA maintained the previous pace of investigations.³⁹ It is important to keep this trend in the longer term.

Accountability and integrity of elected and appointed officials

Romania has developed the requisite framework both for the prosecution of high-level corruption and for independent verification of wealth, potential conflicts of interest and incompatibilities of public officials, all of which are key elements of anti-corruption policy. High-level officials are subject to strict asset disclosure obligations and their asset declarations are publicly accessible. However, political support for the current integrity framework, both from a legislative and institutional point of view, has been inconsistent.⁴⁰

Since 2008, the ANI identified more than 469 incompatibilities, 194 administrative and criminal conflicts of interest, 46 cases of unjustified wealth, 346 cases of potential criminal offences and applied more than 5 200 fines for breach of asset disclosure legislation. Among the officials investigated by ANI: 50 MPs, 12 presidents and vice-presidents of country councils, 10 ministers and state secretaries and over 700 local elected officials, managers of public agencies, police officers, magistrates, etc. Over the last five years, more than 80% of the ANI's decisions on

34 Between 2012 and the first semester of 2013, there were 432 indictments concerning 722 defendants. Among these: police officers, officials within local administration, doctors, employees of state agencies, etc. 25% of these cases where indictments were issued started ex officio. In the same reference period, 266 final court decisions concerning 332 defendants were rendered in corruption cases (conviction rate of 92.77%). Only 20.78% of the sentences are to be served in prison.

35 See also January 2014 CVM Report: http://ec.europa.eu/cvm/docs/swd_2014_37_en.pdf.

36 According to Romanian law, the heads of the DNA, of the General Prosecutor's Office and the Directorate for Investigating Organised Crime and Terrorism (DIICOT) are appointed by the President of Romania, based on a proposal of the Minister of Justice, followed by a consultative opinion of the Superior Council of Magistracy. The Minister of Justice has the prerogative to propose any prosecutor, but nothing prevents making the proposal on the basis of a procedure that follows criteria of transparency and professionalism.

37 http://ec.europa.eu/cvm/docs/swd_2014_37_en.pdf.

38 Idem.

39 See statistical data mentioned at the beginning of this section.

40 http://ec.europa.eu/cvm/docs/com_2014_37_en.pdf.

incompatibilities and conflicts of interest remained final. Nevertheless, there were also notable cases in which the follow-up of its decisions has not been satisfactory.⁴¹

Parliament has shown a lack of consistency in taking decisions related to integrity issues, including on the follow-up of the decisions of the ANI on conflicts of interest or incompatibilities. Once these decisions are final, they should lead to termination of office of the elected official in question. Since mid-2012, however, the judiciary had to refer twice to the Constitutional Court following unwillingness of Parliament to terminate mandates as a result of final court decisions on incompatibility of MPs. The most recent case dates from the autumn of 2013 and concerns the ANI's decision on the incompatibility of a senator confirmed by the High Court of Cassation and Justice and which was left unenforced by the Senate. The Constitutional Court had therefore to intervene once more, ruling on the constitutional conflict between the legislative power and the judiciary.⁴² Since then, the Senate has not taken any action.

Parliament's failure to implement some of the ANI's final decisions affected the credibility of its commitment to the fight against corruption. Moreover, elected officials have frequently and seriously undermined the institutional stability of the ANI through legislative proposals.

Recently, there has been wide public debate concerning the possible amendment of the legislation on incompatibilities applicable to local elected officials. This regarded in particular the ban on participation in supervisory boards of local state-owned or state-controlled companies and inter-community development associations which are responsible for contracting public utility services for a number of city halls. The issue came to the fore when the ANI discovered a number of breaches of these legal provisions. The incompatibility rules regarding the boards of state-owned or state-controlled companies are important elements that address potential corruption and conflict of interest risks in public procurement and supervision of public contracts and at the interface with political party or electoral campaign financing.

Furthermore, Parliament's decisions to lift immunity have so far been unpredictable.⁴³ MPs do not have immunity from criminal investigation, although they do enjoy immunity from pre-trial arrest and search. However, MPs who are or were ministers enjoy immunity for offences committed in relation to their ministerial duties, and particular difficulties seem to arise in such cases. Procedures for lifting immunity do not require Parliament to motivate its decisions. In three recent cases in 2012 and 2013, the Chamber of Deputies voted against lifting the immunity of former ministers from criminal investigation into allegations of corruption, economic crimes and electoral fraud.

In January 2013, Parliament adopted amendments to the statute of MPs. However, as these were challenged before the Constitutional Court, they did not take effect until July 2013, and the implementing regulations and a new code of conduct⁴⁴ had not yet been adopted at the time of writing. While some of the proposed new provisions are welcome, notably as regards the

41 http://ec.europa.eu/cvm/docs/com_2014_37_en.pdf.

42 <http://www.ccr.ro/noutati/COMUNICAT-DE-PRES-70>.

43 Between 2007 and mid-2012, DNA, through the General Prosecutor, filed 7 requests to Parliament for lifting immunity for investigation of MPs and 5 to the Romanian President with regard to the investigation of ministers and former ministers. Parliament approved 5 of these 7 requests and dismissed the rest, while the President approved all requests. In another case regarding an MP (and former minister), the extension of the criminal investigation to other offences was dismissed by Parliament. As far as search is concerned, Parliament rejected a request against an MP (and former minister). Since 2007, until mid-2013 there were three requests for preventive arrest of MPs: in one case the request was dismissed and in two other cases accepted.

44 The President of the Chamber of Deputies sent a draft of the code for consultation to the European Parliament in December 2013.

enforcement of final decisions on incompatibility, their effectiveness will need to be assessed over time.⁴⁵

In early December 2013, Parliament adopted a number of amendments to the criminal code which, among others things, excluded MPs, the President and the liberal professions from the scope of the definition of public officials. This meant that these categories could no longer be charged with corruption offences in the public sector. Moreover, a number of amendments were passed which considerably narrowed the scope and application of criminal law provisions on conflicts of interest. These recent amendments raise serious concerns as to the level of integrity and anti-corruption standards to which elected officials are committed. In January 2014, the Constitutional Court found all these amendments unconstitutional.⁴⁶

Integrity of the judiciary

The DNA indicted 23 judges and 30 prosecutors between January 2006 and the fourth quarter of 2012. Final convictions on corruption charges were rendered in the same reference period for 12 judges and 11 prosecutors. In recent years, six cases concerned judges of the High Court, including heads of sections. They were charged with bribery, trading in influence and complicity to other criminal offences.⁴⁷ Two members of the Superior Council of Magistracy were indicted on corruption charges. Further monitoring is needed to assess the dissuasiveness of sanctions applied.⁴⁸ The most recent cases concerned various levels of the judiciary and revealed networks involving judges, attorneys and defendants trading in influence to secure favourable court decisions, or prosecutors shielding certain criminal networks from investigation. In one case the alleged level of the bribes was as high as EUR 1 million. In another case, two prosecutors,⁴⁹ one judge and one police officer were indicted on charges of being complicit to, instigating and participating in the unauthorised use of classified information belonging to the police intelligence service in exchange for money, services and other undue advantages related to leading positions in the DNA and the Prosecutor-General's Office. The Superior Council of Magistracy has reacted promptly to these cases, endorsing in due time requests for search and pre-trial arrest, suspending from magistracy the defendants in question and requesting various checks, for instance to see whether the random distribution of cases system was being manipulated.

At the end of 2011, the Superior Council of Magistracy adopted a strategy for integrity within the judiciary and a corresponding action plan aiming, among others, at enhancing integrity rules and improving disciplinary liability mechanisms.⁵⁰ The judicial inspection, now an autonomous body, was strengthened and took steps to improve its methodology. New legislation on disciplinary liability of magistrates allows for more effective disciplinary procedures.⁵¹ It has also introduced the possibility of suspending magistrates pending disciplinary investigation. In August 2013, the Superior Council of Magistracy endorsed a legislative proposal by the Ministry of Justice to eliminate the special pensions⁵² for magistrates who have incurred final convictions on charges of corruption or offences related to the exercise of their office when committed with intent or any

45 http://ec.europa.eu/cvm/docs/swd_2014_37_en.pdf.

46 <http://www.ccr.ro/noutati/COMUNICAT-DE-PRES-75> .

47 Notably offences related to disclosing information on authorisation of search, arrest or interception of other magistrates.

48 http://ec.europa.eu/cvm/docs/swd_2014_37_en.pdf.

49 Of whom one member of the Superior Council of Magistracy at the time and one advisor in the same Council.

50 <http://www.csm1909.ro/csm/index.php?cmd=0901>.

51 Law no. 24 of 2012 amending Law 303 of 2004 on the statute of judges and prosecutors and Law 317 of 2004 on the Superior Council of Magistracy.

52 These pensions are restricted to magistrates and are exempt from the general pension rules. They are considerably higher than the general norm.

other offences that harm the reputation of the judiciary. The legislative proposal was approved by the Government in August 2013 and is currently tabled for adoption in Parliament.

Public procurement

Public procurement represents an important share of the Romanian economy. Public works, goods and services constituted 24.6% of GDP in Romania in 2011. The value of calls for tender published in the Official Journal as a percentage of total expenditure on public works, goods and services was 30.9% in 2011.⁵³ While the legislative framework for public procurement is in place, frequent changes and lack of a uniform practice or guidance from the institutions concerned are a source of uncertainty for stakeholders.⁵⁴ If nothing else, these successive modifications generated confusion about the scope of public procurement legislation with regard to state-owned and state-controlled companies. Furthermore, the consistency of decisions by courts and review bodies could be improved further. The use at national level of the negotiated procedure without publication of a tender notice is well above the EU average (it amounts to about 15% of the total number of procurement procedures,⁵⁵ while the EU average is about 5%).

According to the 2013 Eurobarometer business survey on corruption,⁵⁶ Romanian respondents from the business sector perceive the following practices as being widespread in public procurement: involvement of bidders in the design of specifications (49%), unclear selection or evaluation criteria (56%), conflicts of interest in the evaluation of the bids (57%), specifications tailor-made for particular companies (59%), abuse of emergency grounds to justify the use of non-competitive or fast-track procedures (51%) and collusive bidding (53%). 64% considered that corruption is widespread in public procurement managed by national authorities (EU average: 56%) and 59% in the case of local authorities (EU average: 60%). A 2012 study by the Romanian Institute for Public Policy (IPP) showed that 90% of Romanian respondents viewed the public procurement process as corrupt due to its lack of transparency, fairness and competitiveness.⁵⁷ These are among the highest percentages in the EU. These indicators, while not necessarily directly related to corruption, illustrate risk factors that increase vulnerabilities to corruption in public procurement procedures.

As shown by a number of external audits, as well as surveys and studies, the Romanian national public procurement system is hampered by numerous irregularities, conflicts of interest and high corruption risks.⁵⁸ Among the most frequent irregularities that could indicate higher risks of corruption include insufficient transparency at all stages of procurement, excessively short deadlines for submitting tenders, changes to the initial information of the tender procedure that are published only at national level, excessively strict selection criteria and irrelevant or artificial algorithms for evaluation of tenders.⁵⁹ Other negative practices noted in external audits and

53 http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/public-procurement-indicators-2011_en.pdf.

54 There is a high frequency of Government Emergency Ordinances (GEO) and amendments to the legislation in this area that create legal instability and lead to inconsistencies in implementation. An example of this is GEO 34/2006 concerning public procurement which was amended four times between December 2012 and June 2013 (i.e. by GEO 77/2012, GEO 31/2013, GEO 35/2013 and Law 193/2013).

55 Data concerning 2011.

56 2013 Flash Eurobarometer 374.

57 Adrian Moraru, Elena Iorga, Loredana Ercus (2012) Transparency, fairness and competitiveness of public procurement in Romania, Institute for Public Policy: <http://www.ipp.ro/pagini/transparen355a-corectitudine-351i-1.php>

58 The report delivered by Deloitte commissioned by DG REGIO provides detailed information on the existing shortcomings of the Romanian public procurement system and was also considered in this assessment. The report was made publicly available by the Romanian authorities: <http://www.sn-seap.ro/wp-content/uploads/2012/07/DG-Regio-Third-Interim-Report-Part-C-FINAL-RO-version.pdf>.

59 'Identifying and Reducing Corruption in Public Procurement in the EU – Development of a methodology to estimate the direct costs of corruption and other elements for an EU-evaluation mechanism in the area of anti-corruption', 30 June 2013, PricewaterhouseCoopers and ECORYS.

verifications concern the use of tailor-made specifications favouring a specific candidate and the direct award of a large number of public contracts by the same contracting authority to a very limited number of economic operators through unjustified use of a negotiated procedure and without publication of tender notice. The current legislation on public procurement does not have clear provisions on revolving door practices and there appears to be a lack of awareness as to the conflict of interest situations that may arise from such practices.

In terms of the supervision of public procurement procedures, a complex institutional structure is in place.⁶⁰ However, the effectiveness of internal and external control mechanisms remains to be established. The independent status of the Romanian review authority on public procurement has not yet been fully secured. Moreover, the institutional framework is overly complex and limited inter-institutional cooperation leads to divergent practices. As a result, substantial irregularities go undetected and unpunished. The weak capacity of the contracting authorities to prepare sound tendering documentation, define adequate selection and award criteria, evaluate the offers or put in place clear red flagging mechanisms is also a source of inefficiency and lack of transparency. The National Authority for Regulating and Monitoring Public Procurement (ANRMAP) is currently working on interpretative guidelines for contracting authorities on a number of governance and procedural-related aspects, including conflicts of interest.

An Electronic Public Procurement System (SEAP) is in place, but challenges remain as to its effective functioning. Since January 2013, contracting authorities have been required to upload in SEAP all notifications on direct procurement exceeding EUR 5 000. A study by the Romanian Institute for Public Policy reports significant irregularities in the execution of public contracts, such as acceptance of works or supplies below the standard of quality stated in the initial offer and a lack of sanctions for late execution or delivery, even when the necessary time for execution or delivery was one of the award criteria, while post-award monitoring is almost non-existent.

The most recent CVM reports also stressed that very limited progress was made in the prevention and sanctioning of corruption in public procurement.⁶¹ Few cases of public procurement fraud were concluded in court with dissuasive sanctions. Between January 2006 and the fourth quarter of 2012, only 15 officials received final convictions in cases brought by the DNA. The cases usually take a long time to process, and frequently contracts or projects have been completed by the time corrupt practices are discovered. Some steps have been taken to train prosecutors and judges on public procurement aspects.

A decentralisation reform is being implemented, through a number of bills and administrative decisions at government or ministry levels. Given the significance and nature of the risks associated with corruption, conflict of interest and favouritism, as highlighted in this section and the section below, there is a need for this reform to be accompanied by effective prevention in response to such risks.⁶²

In relation to **EU funds**, according to aggregate DNA statistics, between 2006 and 2012, EUR 36 million in EU funds was diverted in Romania through corruption and fraud. The DNA indicted

60 The National Authority for Regulating and Monitoring Public Procurement (ANRMAP), coordinated by the prime minister, is in charge of regulating and monitoring public procurement (including systematic ex ante control of tender documents and ex post controls of public procurement procedures based on risk assessments). The Central Unit for Coordination and Verification of Public Procurement (UCVAP), which is part of the Ministry of Public Finance, is responsible for ex ante control of the regularity of procurement procedures (selected on the basis of risk assessments) through local observers participating in tendering committees (their reports are consultative). The National Council for Solving Complaints (CNSC) is a specialised administrative-judicial body competent to hear public procurement complaints in first instance, before contracts are signed. The National Management Centre for Informational Society (CNMSI), which is part of the Ministry of Communications and the Information Society, implements and operates the national Electronic System for Public Procurement (SEAP).

61 http://ec.europa.eu/cvm/docs/com_2013_47_en.pdf and http://ec.europa.eu/cvm/docs/swd_2014_37_en.pdf.

62 See also analysis on these issues of the CVM Report of January 2014: http://ec.europa.eu/cvm/docs/swd_2014_37_en.pdf.

406 defendants, and the courts handed down 82 final decisions against 127 persons. At the local level public procurement is particularly vulnerable to corruption.

Since 2010, several audits by the European Commission have highlighted substantial shortcomings in the Romanian public procurement system. The fact that these were not prevented, detected or corrected by the national management and control system, is indicative of systemic deficiencies. The Romanian institutional set-up for public procurement was found to have insufficient capacity and capability for effective controls on spending of EU funds. These shortcomings led to temporary interruptions of payments within Structural Funds to protect the financial interests of the EU. The Commission also raised reputational reservations in 2011 regarding 2007-13 programmes in Romania. The management and control systems were adapted and financial corrections were accepted and implemented by the Romanian authorities, as a result of which the Commission lifted the reservations and resumed payments.

Conflicts of interest and favouritism

As illustrated in the previous section, conflicts of interest and favouritism appear to be among the most recurrent problems in the allocation and spending of public money (including EU funds) both at central and at local levels while current prevention and control mechanisms are difficult to enforce or not sufficiently dissuasive. The detection and notification rate of conflict of interest by public procurement authorities appears rather low as compared to the size of the actual risks related to this issue as demonstrated by the ANI's findings. To remedy this, memoranda were signed in 2013 between the Public Procurement Authority (ANRMAP) and the ANI to launch an integrated information system for preventing and detecting through ex ante controls potential conflicts of interest.

In 2012, the ANI carried out a study on local administration which revealed a high number of cases of conflicts of interest.⁶³ Many local councillors concluded contracts with their own companies or with companies controlled by their relatives. The ANI found 78 cases of local elected officials incompatible or in conflict of interest. Of these, 33 cases were submitted to the prosecution service on suspicion of criminal conflict of interest, and an additional 17 on suspicion of other alleged criminal offences, including corruption and forgery. 75 incompatibility decisions were issued, of which 24 became final and 51 are currently being challenged in court.

The ANI reports that more than 80% of court decisions confirm its reports on conflicts of interest and incompatibilities.⁶⁴ While this represents an improvement, the case-law in the area of conflicts of interest remains inconsistent. Courts have issued contradictory decisions for comparable cases. For example, in three cases concerning presidents of county councils who in their official capacity signed contracts on behalf of local administration with their own companies, two courts decided that there was a conflict of interest, while a third decided there was not. The CVM report of January 2014 also noted that more remains to be done to ensure dissuasiveness of sanctions applied and effectiveness in recuperating the damage caused to the public interest.⁶⁵ Separate court proceedings are required to adjudicate on appeals lodged against a finding of conflict of interest, and then to enforce the final decision and revoke any legal acts signed while the offending official had the conflict of interest. Such proceedings can take years to complete, delaying the sanctioning.

To remedy this situation, a more systematic approach to ex ante checks is needed, a task to which the ANI is best suited, provided it is given the necessary resources. In April 2013, the Government

63 http://www.integritate.eu/UserFiles/File/Rapoarte/Raport_ActivitateaANI_Anul2012_CfLegii544_2001.pdf .

64 Period 2008-2013.

65 http://ec.europa.eu/cvm/docs/swd_2014_37_en.pdf.

approved a memorandum⁶⁶ tasking the ANI to carry out systematic ex ante checks on conflict of interest using a nationwide database of all public officials who manage EU funds. Careful consideration must be given to the capacity needed for the implementation of this verification system.

While conflict of interest is a criminal offence under Romanian law, prosecution services have long been reluctant to prosecute such cases. Recently they have become more active. During 2008-2013, 138 cases were referred for prosecution on suspicion of criminal conflicts of interest. More than half of these concerned elected public officials. Effective criminal investigation remains limited: 7% of cases were sent to court and an additional 7% resulted in pre-trial proceedings. In 36% of cases no proceedings were launched, and the remaining 50% are under investigation by the prosecution. In March 2013, the acting Prosecutor-General overturned prosecutors' decisions not to bring charges in 15 conflict of interest cases involving former and current MPs. In 2012 and 2013, 20 indictments were made with regard to conflict of interest cases. In mid-2013, all prosecutors' offices attached to courts of appeal developed regional strategies for addressing conflict of interest. As mentioned above, in early December 2013, Parliament adopted a number of amendments to the criminal code narrowing the scope and application of the conflict of interest offence, removing public officials and administrative decisions from its scope and limiting applicability to contractual personnel of public authorities. The amendments were declared unconstitutional by the Constitutional Court in January 2014.

Research suggests that the allocation of public funds in Romania, notably at local level, remains a problematic area where political favouritism often prevails over objective criteria and the public interest.⁶⁷ To measure the extent of political clientelism in public administration, the research looked into different types of funds transferred from the state budget during 2004-2011. These ranged from reserve funds to funds for environmental purposes. The allocation of these funds was analysed in correlation with the political affiliation of the allocating officials. The research revealed a high correlation between the two to the detriment of public interest considerations. For example, the research suggested that the national disaster relief emergency fund, earmarked for natural disasters, had been influenced by all political parties in government to channel resources to allegedly partisan reasons unrelated to the occurrence of natural disasters. The share of funds allocated to the main government party ranged from 49% in 2004 and 45% in 2008 to 62% in 2010.⁶⁸

Another research report shed light on other opportunities for discretionary allocation, such as the funds for roads (county and rural), schools, rural water systems and bridges.⁶⁹ In addition, only 25% of Romanian municipalities are able to cover their payroll expenses from revenues alone, creating a serious dependence on discretionary allocations. The largest allocations, worth over EUR 1 billion, were made during the boom years of 2007-2008. This period overlaps with the highest level of clientelism identified by the research.

The study on clientelism also pointed to major flaws in the management and supervision of state-owned companies and assessed the impact of discretionary allocations on the balance sheets. The most widespread practices involve the overstating of public procurement contracts, where state-owned enterprises conclude non-competitive purchase contracts above market prices with favoured partners or sales below market prices.

66 Memorandum 05/04/2013.

67 <http://expertforum.ro/extra/harta-bugetelor/EFOR-rap-anual-2013.pdf> and Romanian Academic Society (2010) Beyond perception-Has Romania's governance improved after 2004? SAR: <http://www.sar.org.ro/dincolo-de-perceptii-a-devenit-guvernarea-romaniei-mai-integra-dupa-2004-3/>

68 <http://www.sar.org.ro/dincolo-de-perceptii-a-devenit-guvernarea-romaniei-mai-integra-dupa-2004-3/>

69 Expert Forum (2013) 'Clientelismul in Romania' (EFOR): <http://expertforum.ro/en/clientelism-in-politics-and-administration-conflicts-of-interest-and-preferential-allocations-of-resources/>.

Healthcare

Informal payments are widespread in the Romanian public healthcare system. Low salaries of doctors and medical staff in the public sector make it more difficult to address this issue effectively. A 2005 national study conducted by the World Bank for the Romanian Ministry of Health estimated the extent of informal payments in healthcare at around EUR 280 million annually.⁷⁰ The actual numbers might be even higher.

According to the 2013 Special Eurobarometer on Corruption, 28% of Romanian respondents who visited public medical facilities in the preceding year had to make an extra payment, or offer a gift or donation besides the official fees. This is the highest percentage in the EU, far above the EU average of 5%. Half of the respondents (highest percentage in the EU, against an EU average of 19%) felt they had to make an extra payment or offer a gift before care was given. Local research carried out in 2011 showed that only 33% of respondents believed that co-payments would reduce informal payments in the health system, while 83% believed that medical personnel is poorly paid and considered this a core cause of corruption in this field.⁷¹

The European collaborative research project ASSPRO CEE (2008-2013) studied informal payments across six countries⁷² and found that they were made by 55% of outpatient healthcare users and 72% of inpatient care users in Romania.⁷³ 81% respondents would prefer to convert the current payments to a system of additional formal payments, while 54% would prefer to use private services instead of paying bribes. 34% of respondents considered informal payments inevitable.⁷⁴

Several projects and strategic plans to address informal payments have been considered by the Ministry of Health, but to date no concrete results have been achieved in reducing the spread of this practice. Recent attempts to set up hotlines for reporting corrupt practices in the medical system failed due to low awareness and reluctance of the general public to report corruption in this sector.⁷⁵ Several measures were also considered in the context of a healthcare reform.

In 2012, a co-payment law was passed requiring some medical services to be paid with coupons, thus reducing the risk of informal payments.⁷⁶ Co-payments started being implemented in March 2013, but only in small fixed amounts for services (except emergencies).

As for procurement in the healthcare sector, general public procurement rules apply. Corruption risks are present not only in the public procurement process as such, but also in preceding stages related to eligibility for the national lists of drugs, procurement for the National Health Programmes or in relation to adding a specific drug, equipment or medical device to the list of reimbursed services and gratuities covered by the National Social Health Insurance Fund. Currently, only the drugs, devices and materials covered by the National Health Programmes follow a centralised procedure of procurement. A law for re-centralisation of public procurement of medicines, materials, devices and equipment was adopted in 2013 establishing the Ministry of Health as a centralised contracting authority.⁷⁷

70 Medical care in Romania comes at an extra cost, 8 March 2009.

71 Romanian Institute for Evaluation and Strategy about the general perception of Romanian healthcare (IRES) 2011.

72 Poland, Romania, Hungary, Bulgaria, Lithuania and Ukraine.

73 20-35% of them had to borrow to be able to pay and one third of respondents did not go to a doctor because they could not afford to.

74 Mihaescu-Pintia C., Florescu S., ASSPRO CEE, 2012.

75 www.medalert.ro.

76 The co-payments are to be calculated as a percentage of the value of health services received, while the total amount for an insured person should not exceed 1/12 of their annual net income.

77 Law 184 of 2013.

In 2011, an integrity department was set up within the Ministry of Health, tasked to develop and implement strategies to fight corrupt practices and counter risks within the healthcare system. It coordinates prevention and combating of corruption policies in public procurement and budgetary allocations within this sector, but has not been tasked to address the issue of informal payments. Since its establishment, the department has faced considerable challenges that have prevented effective verification. These were related to the powers, tools, financial resources and staff it has been given.⁷⁸ The department has started to carry out a few checks, but their impact and follow-up remain to be seen.

3. FUTURE STEPS

Corruption, both petty and political, remains a systemic problem in Romania. While some anti-corruption reforms have been pursued over the past years, their outcome proved to be unstable and easily reversible. Positive results were noted in the prosecution and more recently in the adjudication of high-level corruption cases, following efforts by specialised law enforcement bodies, prosecutors, and judges. However, the political will to address corruption and promote high standards of integrity has been inconsistent over time. The Cooperation and Verification Mechanism (CVM) Report of January 2014 highlighted that, while progress was made in many areas of judiciary and anti-corruption policies, 'the readiness with which the foundation stones of reform could be challenged in Parliament served as a reminder that there is far from consensus about pursuing the objectives of the CVM.'⁷⁹ Accountability and integrity of elected and appointed officials remain matters of concern. More determined efforts are needed to address corruption effectively within the judiciary and healthcare systems, and in connection with public procurement. The policy for preventing corruption remains underdeveloped and inefficient.

The following points require further attention:

- Ensuring that all necessary guarantees remain in place to safeguard the stability, independence and continuation of the track record of anti-corruption institutions and the judiciary regarding non-partisan **investigations and effective court proceedings** concerning high-level corruption cases, including with regard to elected and appointed officials. Implementing coherent preventive and awareness-raising measures, accompanied by an effective sanctioning regime, to reinforce integrity standards in the **judiciary**, actively involving all relevant actors in the judiciary, including the Superior Council of Magistracy, the Judicial Inspection, magistrates' associations, courts and prosecutors' offices.
- Implementing comprehensive codes of conduct for **elected officials** and ensuring corresponding accountability tools and dissuasive sanctions for corrupt practices, conflicts of interest or incompatibilities. Consider developing ethical codes for **political parties** or establishing ethics pacts between parties to promote high integrity standards. Ensuring that all decisions regarding **lifting of immunities** are duly reasoned and taken promptly, and that no obstruction of justice is allowed.
- Developing uniform and effective prevention tools within contracting authorities and **public procurement** supervisory institutions, with particular focus on conflict of interest at local level. Ensuring systematic monitoring and transparency of the implementation of large-scale public contracts, including EU-funded projects. Ensuring the stability of the legal framework on conflicts of interests and the incompatibility rules applicable to elected

⁷⁸ http://ec.europa.eu/cvm/docs/com_2012_410_en.pdf.

⁷⁹ http://ec.europa.eu/cvm/docs/com_2014_37_en.pdf.

representatives and local level officials. Developing a more efficient system permitting to early detect, remedy and effectively sanction conflicts of interest in public procurement. Effectively implementing clear rules on revolving door practices in public procurement and raising awareness of the risks such practices entail. Establishing effective control mechanisms targeting the **allocation of government funds** to local administrations and **state-owned companies** and implementing safeguards against discretionary allocation to the detriment of the public interest. Strengthening anti-corruption safeguards for public procurement processes within state-owned companies.

- Implementing effective strategies to achieve a reduction in the level of informal payments in the public **healthcare** system, including by considering improving remuneration and working conditions for medical staff. Ensuring the necessary powers, professionalism and operational independence of the integrity department within the Ministry of Health and enabling it to carry out effective integrity controls, including on budgetary and procurement aspects. Ensuring effective follow-up of the department's findings.